

MONTANA LEGISLATIVE HISTORY

Chapter 460 19 93

Bill H \_\_\_\_\_ S 280 Original bill & history C

H. Committee on Natural Resources

Hearing Date(s) Mar 24 ☒ C

Mar 26 ☒ C

\_\_\_\_\_ C

\_\_\_\_\_ C

Date Out Mar 29 ☒ C

S. Committee on Natural Resources

Hearing Date(s) Feb 17 ☒ C

Feb 18 ☒ C

\_\_\_\_\_ C

\_\_\_\_\_ C

Date Out Feb 18 ☒ C

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Did this bill originate in an interim committee?        Yes        No

Committee \_\_\_\_\_

Report \_\_\_\_\_

|      |                                                                                     |    |   |
|------|-------------------------------------------------------------------------------------|----|---|
| 2/11 | HEARING                                                                             |    |   |
| 2/19 | COMMITTEE REPORT—BILL PASSED AS AMENDED                                             |    |   |
| 2/20 | 2ND READING PASSED                                                                  | 50 | 0 |
| 2/22 | 3RD READING PASSED                                                                  | 48 | 0 |
|      | TRANSMITTED TO HOUSE                                                                |    |   |
| 2/23 | REFERRED TO EDUCATION & CULTURAL RESOURCES                                          |    |   |
| 2/23 | FIRST READING                                                                       |    |   |
| 3/02 | REREFERRED TO SCHOOL FUNDING SELECT COMMITTEE                                       |    |   |
| 3/16 | HEARING                                                                             |    |   |
| 3/17 | COMMITTEE REPORT—BILL CONCURRED AND<br>REREFERRED TO EDUCATION & CULTURAL RESOURCES |    |   |
| 3/24 | HEARING                                                                             |    |   |
| 3/29 | COMMITTEE REPORT—BILL CONCURRED AS AMENDED                                          |    |   |
| 3/30 | 2ND READING CONCURRED                                                               | 92 | 3 |
| 4/01 | 3RD READING CONCURRED                                                               | 97 | 1 |
|      | RETURNED TO SENATE WITH AMENDMENTS                                                  |    |   |
| 4/03 | 2ND READING AMENDMENTS CONCURRED                                                    | 47 | 0 |
| 4/05 | 3RD READING AMENDMENTS CONCURRED                                                    | 50 | 0 |
| 4/07 | SIGNED BY PRESIDENT                                                                 |    |   |
| 4/07 | SIGNED BY SPEAKER                                                                   |    |   |
| 4/13 | TRANSMITTED TO GOVERNOR                                                             |    |   |
| 4/16 | SIGNED BY GOVERNOR                                                                  |    |   |
|      | CHAPTER NUMBER 375                                                                  |    |   |
|      | EFFECTIVE DATE: 07/01/93                                                            |    |   |

SB 279 INTRODUCED BY SWYSGOOD, ET AL.

ESTABLISH ADDITIONAL SURVEY REQUIREMENTS FOR SURVEYS  
AFFECTING IRRIGATION DISTRICTS

|      |                                                 |    |   |
|------|-------------------------------------------------|----|---|
| 1/29 | INTRODUCED                                      |    |   |
| 1/29 | REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION |    |   |
| 1/29 | FIRST READING                                   |    |   |
| 2/05 | HEARING                                         |    |   |
| 2/11 | COMMITTEE REPORT—BILL PASSED AS AMENDED         |    |   |
| 2/12 | 2ND READING PASSED                              | 49 | 0 |
| 2/13 | 3RD READING PASSED                              | 50 | 0 |
|      | TRANSMITTED TO HOUSE                            |    |   |
| 2/23 | REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION |    |   |
| 2/23 | FIRST READING                                   |    |   |
| 3/02 | HEARING                                         |    |   |
| 3/03 | COMMITTEE REPORT—BILL CONCURRED                 |    |   |
| 3/06 | 2ND READING CONCURRED                           | 99 | 1 |
| 3/09 | 3RD READING CONCURRED                           | 98 | 0 |
|      | RETURNED TO SENATE                              |    |   |
| 3/13 | SIGNED BY PRESIDENT                             |    |   |
| 3/15 | SIGNED BY SPEAKER                               |    |   |
| 3/16 | TRANSMITTED TO GOVERNOR                         |    |   |
| 3/19 | SIGNED BY GOVERNOR                              |    |   |
|      | CHAPTER NUMBER 136                              |    |   |
|      | EFFECTIVE DATE: 03/19/93                        |    |   |

SB 280 INTRODUCED BY GROSFIELD, ET AL.

IMPLEMENT 1992 STATE WATER PLAN—WATER QUALITY/QUANTITY  
BY REQUEST OF DEPARTMENT OF NATURAL RESOURCES AND  
CONSERVATION

|      |                               |  |  |
|------|-------------------------------|--|--|
| 1/30 | INTRODUCED                    |  |  |
| 1/30 | REFERRED TO NATURAL RESOURCES |  |  |
| 1/30 | FIRST READING                 |  |  |

|      |                                            |    |    |
|------|--------------------------------------------|----|----|
| 1/30 | FISCAL NOTE REQUESTED                      |    |    |
| 2/06 | FISCAL NOTE RECEIVED                       |    |    |
| 2/06 | FISCAL NOTE PRINTED                        |    |    |
| 2/17 | HEARING                                    |    |    |
| 2/18 | REVISED FISCAL NOTE REQUESTED              |    |    |
| 2/19 | COMMITTEE REPORT—BILL PASSED               |    |    |
| 2/20 | 2ND READING PASSED                         | 36 | 14 |
| 2/20 | REVISED FISCAL NOTE RECEIVED               |    |    |
| 2/22 | 3RD READING PASSED                         | 36 | 12 |
| 2/22 | REVISED FISCAL NOTE PRINTED                |    |    |
|      | TRANSMITTED TO HOUSE                       |    |    |
| 2/23 | REFERRED TO NATURAL RESOURCES              |    |    |
| 2/23 | FIRST READING                              |    |    |
| 3/24 | HEARING                                    |    |    |
| 3/29 | COMMITTEE REPORT—BILL CONCURRED AS AMENDED |    |    |
| 3/30 | 2ND READING CONCURRED                      | 84 | 16 |
| 4/01 | 3RD READING CONCURRED                      | 78 | 21 |
|      | RETURNED TO SENATE WITH AMENDMENTS         |    |    |
| 4/05 | 2ND READING AMENDMENTS CONCURRED           | 50 | 0  |
| 4/06 | 3RD READING AMENDMENTS CONCURRED           | 50 | 0  |
| 4/13 | SIGNED BY PRESIDENT                        |    |    |
| 4/15 | SIGNED BY SPEAKER                          |    |    |
| 4/16 | TRANSMITTED TO GOVERNOR                    |    |    |
| 4/21 | SIGNED BY GOVERNOR                         |    |    |
|      | CHAPTER NUMBER 460                         |    |    |
|      | EFFECTIVE DATE: 04/21/93                   |    |    |

SB 281 INTRODUCED BY FRITZ, ET AL.  
 PROTECT RIGHTS OF MINORS AND CREATE CHILDREN'S ADVOCATE  
 OFFICE

|      |                       |  |  |
|------|-----------------------|--|--|
| 1/30 | INTRODUCED            |  |  |
| 1/30 | REFERRED TO JUDICIARY |  |  |
| 1/30 | FIRST READING         |  |  |
| 2/03 | REFERRED TO RULES     |  |  |
| 2/05 | HEARING               |  |  |
| 2/05 | TABLED IN COMMITTEE   |  |  |

SB 282 INTRODUCED BY SWYSGOOD, ET AL.  
 CLOSE JEFFERSON RIVER AND MADISON RIVER BASINS TO FURTHER  
 CONSUMPTIVE APPROPRIATIONS

|      |                                         |    |   |
|------|-----------------------------------------|----|---|
| 1/30 | INTRODUCED                              |    |   |
| 1/30 | REFERRED TO NATURAL RESOURCES           |    |   |
| 1/30 | FIRST READING                           |    |   |
| 1/30 | FISCAL NOTE REQUESTED                   |    |   |
| 2/08 | FISCAL NOTE RECEIVED                    |    |   |
| 2/09 | FISCAL NOTE PRINTED                     |    |   |
| 2/17 | HEARING                                 |    |   |
| 2/19 | COMMITTEE REPORT—BILL PASSED AS AMENDED |    |   |
| 2/20 | 2ND READING PASSED                      | 50 | 0 |
| 2/22 | 3RD READING PASSED                      | 48 | 0 |
|      | TRANSMITTED TO HOUSE                    |    |   |
| 2/23 | REFERRED TO NATURAL RESOURCES           |    |   |
| 2/23 | FIRST READING                           |    |   |
| 3/10 | HEARING                                 |    |   |
| 3/11 | COMMITTEE REPORT—BILL CONCURRED         |    |   |
| 3/13 | 2ND READING CONCURRED                   | 96 | 0 |
| 3/16 | 3RD READING CONCURRED                   | 96 | 3 |

determine activities that do not cause significant degradation. He estimated that it would cost \$250,000 to \$300,000 to do nondegradation reviews.

Senator Doherty asked Mona Jamison to respond to that and asked both sponsors if it was their intent that SB 388 or SB 401 affect current litigation.

Ms. Jamison said SB 388 would gut the litigation involving Stillwater Mining Company. She said SB 401 would have some impact, but not as much as SB 388. Ms. Jamison said the existing law works and two projects have received waivers. She said she is not suggesting that the rules do not have to be changed and clarified.

Senator Doherty said Senator McClernan should hope the department will not use SB 401, should it pass in any form, as an attempt to influence any ongoing litigation. Senator McClernan said he hopes the department would not try to apply any legislation to a situation like that.

Senator Swysgood noted SB 388 does not have an effective date which means it becomes effective October 1.

#### Closing by Sponsor:

Senator Swysgood said no one wants to see the water degraded. He said SB 388 attempts to develop a policy that addresses all of the concerns. He said this is a contentious and controversial area, but very important to everyone.

Senator McClernan closed on SB 401. He said the Committee has been presented with 3 or 4 options. He added he thinks the EQC study would take a couple years or longer, but the Committee should give some thought to all the options.

#### HEARING ON SB 280

#### Opening Statement by Sponsor:

Senator Lorents Grosfield, Senate District 41, said SB 280 is the result of the state water planning process. He described the bill to the Committee, stating it is a significant change in Montana water law and should be looked at seriously.

#### Proponents' Testimony:

Karen Fagg, representing Governor Racicot's office, expressed the governor's support for SB 280, noting he believes it is a well thought out, well compromised bill. She said interest in SB 280 was very high, as was the belief in the need to develop a

compromise that could be presented to the legislature. Ms. Fagg said SB 280 recognizes all of the interests and all of the water uses that are critical to the future of Montana. She urged the Committee to recognize the compromise and balance that was involved, and to support the bill.

Gary Fritz, Department of Natural Resources and Conservation (DNRC) complimented Sen. Grosfield on his presentation and work on the bill and said DNRC supports SB 280 (Exhibit #5).

Stan Bradshaw, Montana Trout Unlimited, commended Ms. Fagg and her staff for the last 4 years of work. SB 280 recognizes that water allocation affects water quality, which, he said, is a major change in the law. Mr. Bradshaw stated SB 280 doesn't effect existing rights, but changes new usage.

Bruce Farling, representing the Clark Fork Coalition, said his organization supports SB 280. He said the coalition is one of two conservation organizations appointed by Ms. Fagg to the steering committee. Mr. Farling said the Committee needs to consider how a new water right for one individual affects many others downstream.

Vivian Drake, supervisor of the Lewis and Clark County Water Quality Protection District said in her work with DNRC and the Water Quality Bureau, it has become clear that water quantity and water quality issues are separate. Ms. Drake added SB 280 goes a long way in bringing these two points together. She urged the Committee to support SB 280.

Ted Doney, representing himself, said he specializes in water rights in his law practice, and has been following this issue very closely for the past 2 years. He supports SB 280 because it incorporates some needed changes in the statute. Mr. Doney said SB 280 integrates water quality with water rights, which he believes is a significant change in the law. Mr. Doney said he thinks it would be bad water policy to increase the burden on applicants for permits or changes. He added he would be satisfied if the record of this hearing clearly showed there is no intent to increase the burden of proof in existing law. He doesn't think wording in SB 280 accurately reflects what was agreed to in the water plan. Mr. Doney said he thinks it is bad policy to place unnecessary burdens on applicants. He suggested public interest be listed as a criteria for issuing a water right or proving a change. Mr. Doney recommended the Committee strike subsection (h) from the bill on pages 3, 10 and 17. Mr. Doney said he does support the bill in general.

John Bloomquist, Montana Stockgrowers Association, said they support the water quality process, but have a problem with the language identified by Mr. Doney. He said this will be a major change in Montana water law. SB 280 would allow a discharge permit holder under the water quality laws to prevent someone from diverting water on to their water right. If there is going

to be a change in water law, it must be specific. Mr. Bloomquist suggested possible amendments.

**Opponents' Testimony:**

None.

**Questions From Committee Members and Responses:**

Senator Weeding said he carried the bill last session. He asked about subsection (i) on page 3 regarding effluent limitations. He said that was the objection to last session's bill.

Mr. Doney said subsection (i) will set defacto instream flows in Montana streams without water rights being attached.

Mr. Bloomquist said if discharge permit holders control someone's ability to divert their water right on a source, it should be dealt with. He suggested adding language which states these criteria are not intended to interfere with someone's ability to utilize their water right. Senator Bianchi said he would like to hear from Mr. Bradshaw on subsection (i).

Mr. Bradshaw said Mr. Doney suggests that everytime somebody files for a change or a new right, they would have to hire a water expert. That subject was broached in the steering committee and in the advisory council which is why lines 14 through 16 are in the bill. Mr. Bradshaw said the burden falls first on the objector, who is going to have to hire the water quality expert. He added that will discourage frivolous objections. Mr. Bradshaw stated the steering committee recommended including public interest criteria. Mr. Bradshaw said the steering committee realized a water quality classification cannot legally be downgraded. He said there is a new fiscal note for SB 280 that has new language.

Senator Grosfield discussed the fiscal notes, stating that the bottom line is there is no fiscal impact. He said he would check on the new fiscal note. Sen. Grosfield added he assumes DHES would only object to major or controversial projects.

Jack Thomas of the Water Quality Bureau, said he helped prepare the fiscal note and served on the steering committee. He said the bureau supports SB 280. Mr. Thomas discussed the two fiscal notes, stating the second one, showing zero impact, is what SB 280 will require from the department's standpoint.

Senator Grosfield said there is a change from the first fiscal note. He asked the Committee to look at the Statement of Intent which says DNRC and the Board of Natural Resources and Conservation should assess the magnitude, character, duration,

and geographical extent of the projected effects and utilize this assessment in a practical manner. Sen. Grosfield said SB 280 deals with stream classification and whether it will be significantly impacted. The intent is to maintain the integrity of water system classification and not do something to a stream that would threaten its classification. An objection could be based on removal of a large amount of water. The department then would assess the magnitude, character, duration and geographical extent of the effect and would utilize that assessment in a practical manner.

Senator Bianchi asked Senator Grosfield to comment on sections (h) and (i) on page 3.

Senator Grosfield said section (i) gives discharge permit holders an opportunity to enter the water permitting process. The water plan requested DHES to notify water users when there was going to be an administrative process, or when there was a discharge permit change. Sen. Grosfield said section (h) is the most significant part of SB 280. Sen. Grosfield said there may not be any streams in the state that currently meet all of those standards.

Senator Keating said he was concerned about the \$300,000 in general fund and asked why the general fund had to be the source of money. Sen. Keating asked if SB 280 would create more work, and increase the number of applications that have to be processed. Senator Grosfield said the bill involved one FTE (full time employee).

Mr. Fritz said the the water development special revenue account, not the general fund, is the funding source for the department's costs.

#### Closing by Sponsor:

Senator Grosfield closed on SB 280. He said he asked the department after the process was over, how much the plan would cost and how much water planning costs the state of Montana. The department said it costs around \$200,000. He said the burden language should be clarified.

#### EXECUTIVE ACTION ON SB 338

#### Motion:

Senator Weeding MOVED TO AMEND SB 338 (SB033801.amk).

#### Discussion:

# ROLL CALL

SENATE COMMITTEE NATURAL RESOURCES

DATE 2/17/93

*night meeting*

| NAME           | PRESENT | ABSENT | EXCUSED |
|----------------|---------|--------|---------|
| Sen. Bianchi   | X       |        |         |
| Sen. Hockett   | X       |        |         |
| Sen. Bartlett  | X       |        | X       |
| Sen. Doherty   | X       |        | X       |
| Sen. Grosfield | X       |        | X       |
| Sen. Keating   | X       |        |         |
| Sen. Kennedy   | X       |        |         |
| Sen. Swift     | X       |        |         |
| Sen. Sunsgaard | X       |        |         |
| Sen. McCernan  | X       |        |         |
| Sen. Treitz    | X       |        |         |
| Sen. Weeding   | X       |        |         |
| Sen. Weldon    | X       |        |         |
|                |         |        |         |
|                |         |        |         |
|                |         |        |         |
|                |         |        |         |
|                |         |        |         |
|                |         |        |         |
|                |         |        |         |
|                |         |        |         |
|                |         |        |         |



TESTIMONY OF THE  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
ON SENATE BILL 280, FIRST READING

BEFORE THE SENATE NATURAL RESOURCES COMMITTEE

FEBRUARY 17, 1992

*A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING THE 1992 STATE WATER PLAN; INCLUDING WATER QUALITY AS A CRITERION FOR WATER PERMIT, CHANGE AUTHORIZATION, CONTROLLED GROUND WATER AREA, AND BASIN CLOSURE DETERMINATIONS; AMENDING SECTIONS 85-2-311, 85-2-319, 85-2-402, AND 85-2-506, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE."*

The Department of Natural Resources and Conservation (DNRC) supports Senate Bill 280. It is the result of the state water planning process in which a problem that was identified by the public as being significant was addressed, and inexpensive and effective mechanisms for solving the problem were developed.

Water quality and water use are inextricably linked by natural physical, chemical, and biological processes. Yet, for the most part, our laws treat water use and water quality protection as separate and distinct functions, capable of being dealt with in isolation. As our scarce water resources become subjected to greater pressure and require more intensive management, it becomes obvious that water quality protection laws begin to affect opportunities for water use. Conversely, water uses that go unregulated by water quality laws begin to have real impacts upon water quality. The right hand doesn't know what the left hand is doing, and it is possible that they work at cross purposes.

This bill provides processes by which our existing laws and institutions can be better integrated to avoid such problems. It does not mandate that water quality protection will always prevail over water development, or vice versa. Under this legislation, the DNRC would continue to bear primary authority for making water allocation decisions, but with some opportunity for consideration of water quality concerns. Without this bill, decisions about whether to approve new water use permits, changes in water rights, basin closures, and the establishment of controlled groundwater areas would be made without adequate consideration of water quality protection needs.

Senate Bill 280 set forth three specific water quality-related criteria to be considered when deciding whether to issue new water use permits, authorize water rights changes, or close basins to new appropriations. These new criteria relate to new or changed water uses and whether they would have water quality impacts that would: (1) adversely affect

(or substantially violate) state water quality classifications and standards that are applicable to the particular source of supply; and (3) substantially interfere with the ability of a water quality discharge permit-holder to comply with the terms of their permit. Water quality criteria would only be considered for new permit and change authorizations if a valid objection with substantial supporting evidence is filed. Further, only the Department of Health and Environmental Sciences would be allowed to apply for a basin closure on the basis of water quality.

With the proposed amendment, controlled groundwater areas could become useful tools for protecting public health and safety in areas having known groundwater quality problems. Such designations could still afford the use of the resource, but regulate its use for specific purposes, require treatment, or limit development so that polluted areas could not migrate or expand..

The fiscal note prepared for this legislation notes the expense of one new position in the DNRC to coordinate water quality and water use management. The DHES portion of the fiscal note calls for an additional 2.7 FTE effort in DHES to implement the provisions of the bill. This is in contrast with the concept envisioned by the state water plan wherein the DHES effort would be handled by existing staff. The intent of this bill is not to require DHES to devote four man-hours in analyzing each permit and change application. The more likely scenario would be the one where an existing staff member would spend a couple of hours each week reviewing the permit notices. However, only infrequently would there be an application worthy of receiving an objection on the basis of water quality concerns. It is estimated that such objections would be received at a rate of only two to three such applications per month. Further, where there are stream reaches or aquifers with known problems, it would be far more cost effective for DHES to petition for a basin closure rather than provide a detailed level of analysis of each individual permit.

In conclusion, this legislation was the culmination of a thoughtful, participatory process for dealing with a very complicated but significant problem. It sets forth a solution to this problem having the least cost and impact to our existing water management institutions. Absent such an approach, there is a very real possibility that the federal government, which is becoming increasingly concerned about this issue from a water quality protection perspective, could impose a regulatory approach upon Montanans that fails to reflect the specific needs and concerns of this state.

MINUTES

MONTANA SENATE  
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chair Bianchi, on February 18, 1993, at 6:04 p.m.

ROLL CALL

Members Present:

Sen. Don Bianchi, Chair (D)  
Sen. Bob Hockett, Vice Chair (D)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Lorents Grosfield (R)  
Sen. Tom Keating (R)  
Sen. Ed Kennedy (D)  
Sen. Bernie Swift (R)  
Sen. Chuck Swysgood (R)  
Sen. Henry McClernan (D)  
Sen. Larry Tveit (R)  
Sen. Cecil Weeding (D)  
Sen. Jeff Weldon (D)

Members Excused: None

Members Absent: None

Staff Present: Paul Sihler, Environmental Quality Council  
David Martin, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: None  
Executive Action: SB 388, SB 282, SB 340, SB 363, SB 401,  
SB 280

EXECUTIVE ACTION ON SB 280

Discussion:

Sen. Grosfield submitted a letter from the Water Policy Committee supporting SB 280 (Exhibit #1). He said this dealt with page 3, subsection G, stating that the water of an appropriator would not be affected. SB 280 would also include geothermal values in the definition.

**Motion:**

Sen. Grosfield MOVED DO PASS ON SB 280.

**Discussion:**

Sen. Swysgood handed out proposed amendments to SB 280 (Exhibit #2) and asked Ted Doney to explain them.

Ted Doney said these amendments would "strike some middle ground". He said the contentious part of SB 280 was page 3, subsection H. He said amendment #6 would change the order of the presentation of evidence with the objector going first, followed by the applicant.

Sen. Weeding refuted bracketed "G" on line 3. He said that the prior appropriator had to prove an adverse effect and it seemed as though the burden ought to be on the applicant. Mr. Doney said the burden of proof would flip to the objector in these amendments. The applicant would have to prove "g, h, and i". He said there may have been a better way to write the amendments but there was not enough time. Mr. Doney said an objector already has the initial burden to come in with an objection. SB 280 would increase the burden of coming in with a valid objection. Then if it goes to a hearing, the burden of proof would increase further.

Sen. Weldon said time was spent developing the language in SB 280 and would like Karen Fagg and Stan Bradshaw to comment on these amendments.

Karen Fagg said she received the amendments as she walked through the door. She said her interpretation was that the burden would be placed on the person filing the objections and the burden was already there. This was one of the compromises of the bill. Rather than having the applicant come in with the information, the burden would be on the objector. The applicant would only have to worry about water quality information if an objection was filed. A valid objection requires substantial technical information. She said she did not understand the changes because they had been addressed in other legislation that had passed before the committee.

Ms. Fagg said she had an objection to amendment #6 referring to what an applicant would do, only if a hearing was held. This would force every valid objection into a hearing process rather than allowing the Department of Natural Resources (DNRC), with its technical expertise, to determine if a valid objection can be remedied through the prepared information. Currently only 25% of objections go through the hearing process, but these amendments would force every valid objection into a hearing. She said the other amendments were asking for a clarification of SB 280 and did not change the intent.

Stan Bradshaw, Trout Unlimited, agreed with Karen Fagg concerning amendment #1. He said it was his understanding that the language in the current bill was protecting existing uses which was different from not preventing uses. For example, a new use might deplete enough water from the stream to change the temperature during critical times of use by fish. Fish may be able to survive at the new temperatures but there may be fewer fish because there are fewer pools to survive in. Some fish may still use the stretch of water and thus the stream would fall under the classification. He said this was distinctly different from what had been dealt with throughout this process. He said amendment #2 would not change the intent and made no difference. Amendment #3 expressed the burden that an objector has in any event and would be changed by having the objector goes first which may force hearings. He said it was disturbing that the criteria in subsections 1g through 1h have not been met and would change the burden of proof. Mr. Bradshaw said other prior appropriators, raising water quality issues, do not have to "jump through hoops" like these. He said additions had already been made to SB 280 to insure applicants do not have to employ water quality experts on every application. He said the first amendment was a distinct departure from the intent of SB 280, but that the department could handle the other amendments although they are a little strange.

Sen. Swysgood said SB 280 was a radical change from current water law.

Sen. Grosfield asked Ted Doney if it was his intent to trigger a hearing with every objection. Mr. Doney said "absolutely not", and did not agree that SB 280 would do that. The only change it would make is the order of appearance in a hearing. The question of whether not or a hearing occurred was up to the applicant and the objector. Changing the order of appearance would insure that there were serious objections.

Sen. Grosfield asked Gary Fritz of the DNRC to reply to the same question. Mr. Fritz said there were objections on 25% of applications, of which a very small number go to hearing. The amendment would change the original intent of SB 280. He said Ms. Fagg's observation was correct, if an application was received with a subsequent objection. The only way the DNRC could force the applicant to provide information was to through a hearing. Otherwise the Department would have to collect the information.

Sen. Swysgood asked if the parties are forced to present evidence under the present system. Mr. Fritz said that the applicant and the objector had to come forward with evidence. Sen. Swysgood asked what would be changed. Mr. Fritz said, under this amendment, the applicant does not have to present evidence unless they are in a hearing situation. The Department needs to have information from both parties to make a decision. This would occur only during the hearing process.

Sen. Weeding said the objector would be forced to build a case by proving there was an impact. The applicant, by law, was supposed to demonstrate there was no impact in the first place. He said it is inherent to all water law that the applicant not violate any prior user. SB 280 would place the burden of proof on the prior user.

Mr. Bradshaw said this change was a compromise to alleviate the fears associated with bringing in water quality issues. The consensus of the Committee was it was important to include water quality in this process and to avoid having an applicant hire a water quality expert on every case. SB 280 would not raise the issue of water quality unless it was a problem. He acknowledged the process was out of the ordinary, but it would be a good approach in this instance.

Sen. Keating referred to page 3, line 14, and asked if it meant the applicant would not initially be required to provide proof. He also asked if the objector would have to present proof, after which the applicant would then have to submit proof. Mr. Fritz said that was correct and the amendment would throw an additional kink in the "already upside down situation" described by Sen. Weeding and Mr. Bradshaw. The amendment would require the applicant to meet the criteria only if the objector first makes a prima facie showing at a hearing. The hearing would be mandatory since only one side of the information had been previously presented.

Sen. Keating said, without the amendment, the department would have evidence from both parties. He asked if both parties would have the right to a hearing, and if the department could settle the issue. Mr. Fritz said the objector would have the right to ask for a hearing.

Gary Fritz said SB 231, submitted by Sen. Yellowtail, described "substantive" evidence and the Committee could rely on that definition. He said "substantive" evidence would present a plausible case. He said amendment #1 had a different intent than the water plan and read a draft statement by Curt Martin (Exhibit 2A).

Sen. Weldon said his concern with the amendments related to the methodology by which SB 280 was constructed. He was impressed by the Montana Water Plan which was developed by the consensus method. The amendments would tip the balance at this point and discourage consensus decision making.

Vote:

The amendments to SB 280 by Sen. Swysgood FAILED in a Roll Call Vote with Sen. Swysgood voting Yes.

Sen. Grosfield replied to the draft letter Gary Fritz read. He said non-degradation, ambient water standards and water pollution were specifically left out of SB 280.

Sen. Swysgood said he would like to present the other side of the issue. He said he understood the process, respected it, but did not agree with it. SB 280 was a radical change in water policy in Montana and some people were uneasy with it even though the concept was good.

**Vote:**

The motion that SB 280 Do Pass CARRIED with Senators Swysgood and Tveit voting No.

**EXECUTIVE ACTION ON SB 340**

**Motion/Vote:** Sen. Doherty MOVED SB 340 DO PASS. The motion CARRIED UNANIMOUSLY.

**EXECUTIVE ACTION ON SB 282**

**Motion/Vote:** Sen. Swysgood MOVED TO STRIKE SECTION 3 OF SB 282 AND RENUMBER THE SECTIONS. The motion CARRIED UNANIMOUSLY.

**Motion/Vote:** Sen. Swysgood MOVED SB 282 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

**EXECUTIVE ACTION ON SB 363**

**Motion:**

Sen. Bianchi MOVED SB 363 DO PASS.

**Discussion:**

Sen. Grosfield said there was a statutory process to close streams, which was not used very often. He said statutory closure had occurred. He said there was also an administrative method, which seemed to be slower. He said it would be dangerous to jump to the conclusion of closing water development in the entire state. He said he supported looking at individual basins when appropriate.

Sen. Swysgood said there was a big difference between this bill and SB 282. He said SB 363 did not contain enough information to make those kind of adjustments.

**Motion/Vote:** Sen. Grosfield made a SUBSTITUTE MOTION TO TABLE SB 363. The motion CARRIED with Sen. Bianchi voting No.

# ROLL CALL

SENATE COMMITTEE NATURAL RESOURCES DATE 2-13-92

| NAME           | PRESENT | ABSENT | EXCUSED |
|----------------|---------|--------|---------|
| Sen. Bianchi   | ✓       |        |         |
| Sen. Hockett   | ✓       |        |         |
| Sen. Bartlett  | ✓       |        |         |
| Sen. Doherty   | ✓       |        |         |
| Sen. Grosfield | ✓       |        |         |
| Sen. Keating   | ✓       |        |         |
| Sen. Kennedy   | ✓       |        |         |
| Sen. Swift     | ✓       |        |         |
| Sen. Sunsgood  | ✓       |        |         |
| Sen. McLernan  | ✓       |        |         |
| Sen. Treitz    | ✓       |        |         |
| Sen. Weeding   | ✓       |        |         |
| Sen. Weldon    | ✓       |        |         |
|                |         |        |         |
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 18, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 280 (first reading copy -- white), respectfully report that Senate Bill No. 280 do pass.

Signed: Don Bianchi  
Senator Don Bianchi, Chair

# ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. 280

DATE \_\_\_\_\_ TIME \_\_\_\_\_ A.M. P.M.

| NAME                  | YES | NO |
|-----------------------|-----|----|
| Chairman Bianchi      |     | ✓  |
| Vice Chairman Hockett |     | ✓  |
| Sen. Bartlett         |     | ✓  |
| Sen. Doherty          |     | ✓  |
| Sen. Grosfield -      |     | ✓  |
| Sen. Keating          |     | ✓  |
| Sen. Kennedy          |     | ✓  |
| Sen. McClellan        |     | ✓  |
| Sen. Swift            |     | ✓  |
| Sen. Swysgood         | ✓   |    |
| Sen. Treit            |     | ✓  |
| Sen. Weeding          |     | ✓  |
| Sen. Weldon           |     | ✓  |
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|                       |     |    |

Leanne Kurtz  
SECRETARY

Sen. Bianchi  
CHAIR

MOTION: Amendments SB 280 Exhibit #2



# WATER POLICY COMMITTEE

Montana State Legislature

## SENATE MEMBERS

Esther G. Bengtson, Vice Chairman  
Tom Beck  
Lorents Grosfield  
Lawrence G. Stimatz

## HOUSE MEMBERS

Hal Harper, Chairman  
Vivian M. Brooke  
Russell Fagg  
Thomas N. Lee

## COMMITTEE STAFF

Environmental Quality Council  
Capitol Station  
Helena, Montana 59620  
(406) 444-3742

February 17, 1992

Senator Don Bianchi  
Chairman, Senate Natural  
Resources Committee  
State Capitol  
Helena, MT 59620

SENATE NATURAL RESOURCES  
EXHIBIT NO. 1  
DATE 2-18-93  
BILL NO. SB 280

Dear Senator Bianchi:

I am writing on behalf of the Water Policy Committee in support of SB 280. Apart from our statutory involvement with and support of the water planning process, the Committee believes that passage and full implementation of SB 280 is crucial to a successful conclusion of the Committee's Geothermal Resource Study.

The 1991 Legislature, through Senate Joint Resolution 25, requested the Committee to conduct an interim study of the need for and feasibility of state regulation of Montana's geothermal resources. Specifically, the Committee was asked to determine:

- i. the need for and feasibility of state regulations to control the development of energy that may be extracted from the natural heat of the water and the development of any geothermal byproduct;
- ii. if regulation of geothermal resources exists in other states with substantial geothermal resources; and
- iii. if water users and entities with an interest in geothermal resources in Montana need and want state regulation of geothermal resources.

Based on the information presented throughout the study, the Committee made the following findings:

- \* Geothermal values are a parameter of water quality.
- \* Under current statutes, rules, and DNRC policy, it is unclear whether or not the DNRC may deny or condition water use permits on the basis of impacts to water quality, including impacts to geothermal values. It is clear that the DNRC has never denied or conditioned a water use permit on this basis.

- \* Geothermal resources have a value in addition to those associated with other, non-geothermal, water resources.
- \* Current geothermal resource users strongly express a desire to ensure that their geothermal resources are fully protected under Montana water law.
- \* Protecting existing and future geothermal resource users necessitates increasing the protection of the geothermal resource itself.

Based on these findings the Committee made the following recommendation to the Legislature.

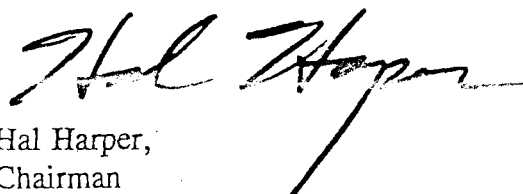
*Final Committee Recommendations*

*The Committee recommends that the DNRC be granted clear authority to deny or condition new water permits or applications for changes to water use permits on the basis of impacts to geothermal values. This determination should be based on beneficial use and adverse impact criteria currently used by the DNRC in processing new permit or change of use applications.*

*Additionally, the Committee recommends that state law be amended to allow for designation of a controlled ground water area on the basis of future or existing adverse impacts to a geothermal resource.*

The Committee closely followed the State Water Planning Process and believes that the changes recommended in that Plan, and now contained in SB 280, will adequately implement the Committee recommendations for the Geothermal Resources Study. The Committee believes that the term "water quality" includes the specific parameter of geothermal values. It is the intent of the Committee that geothermal values be added to the "bundle" of rights protected under the SB 280.

Sincerely,

  
Hal Harper,  
Chairman

Amendments to Senate Bill No. 280  
First Reading Copy

Requested by Sen. Swysgood  
For the Committee on Natural Resources

Prepared by Michael S. Kakuk  
February 18, 1993

1. Page 3, lines 8 and 9.

Strike: "be" on line 8 through "with" on line 9

Insert: "not prevent the uses provided in"

SENATE NATURAL RESOURCES

2. Page 3, line 17.

Following: "substantive"

Insert: "documentary or analytical"

EXHIBIT NO. 2

DATE 2-18-93

BILL NO. SB 280

3. Page 3, line 20.

Following: "met."

Insert: "If a hearing is held on an application in which a valid objection has been filed, the applicant is required to prove that the criteria in subsections (1)(g) through (1)(i) have been met only if the objector first makes a prima facie showing at the hearing, with documentary or analytical evidence or expert testimony, that the criteria in subsections (1)(g) through (1)(h) have not been met."

4. Page 10, lines 21 and 22.

Strike: "be" on line 21 through "with" on line 22

Insert: "not prevent the uses provided in"

5. Page 11, line 5.

Following: "substantive"

Insert: "documentary or analytical"

6. Page 11, line 8.

Following: "met."

Insert: "If a hearing is held on an application in which a valid objection has been filed, the applicant is required to prove that the criteria in subsections (1)(g) through (1)(i) have been met only if the objector first makes a prima facie showing at the hearing, with documentary or analytical evidence or expert testimony, that the criteria in subsections (1)(g) through (1)(h) have not been met."

7. Page 17, lines 20 and 21.

Strike: "be" on line 20 through "with" on line 21

Insert: "not prevent the uses provided in"

8. Page 18, line 4.

Following: "substantive"

Insert: "documentary or analytical"

9. Page 18, line 7.

Following: "met."

Insert: "If a hearing is held on an application in which a valid objection has been filed, the applicant is required to prove that the criteria in subsections (1)(g) through (1)(i) have been met only if the objector first makes a prima facie showing at the hearing, with documentary or analytical evidence, or expert testimony, that the criteria in subsections (1)(g) through (1)(h) have not been met."

REP. TOOLE asked how current law differs from SB 346. Mr. Doney replied that both scenarios can create more situations where appropriators will need to take notice of situations on streams.

REP. RANEY asked if there is less returned water in basins. Mr. Doney said if the water is left in the streams, there will be a substantial effect on what is occurring.

REP. FELAND questioned how many transfers DNRC processes each year. Gary Fritz, DNRC, said approximately 200 changes in appropriations are granted each year, the majority reflect changes in the point of diversion with a lesser number requesting a change in usage.

REP. RANEY asked Mr. Fritz how many of these changes are questioned. Mr. Fritz said objections are raised on approximately one-fourth of the requests.

REP. RANEY asked who will be involved in these objections. Mr. Fritz said the burden of proof lies with the objectors. If the point of diversion is moved, there could be costs assessed.

REP. ORR said there is concern that Montana water will be given away if SB 346 passes. Water in rivers has to be diverted between agricultural and recreational uses.

REP. BROOKE said the fear associated with SB 346 stems from concerns over leasing and selling. Mr. Doney said change and fear go hand-in-hand. People need to be educated about how the law will work.

REP. STOVALL asked Mr. Doney to describe the need for lease revocation. Mr. Doney said this provision was put in the bill as a safeguard to protect existing water right holders.

Closing by Sponsor:

SEN. YELLOWTAIL remarked that appropriators cannot make changes unless there is proof the change will not adversely affect another's water rights. He emphasized the currently de-watered Montana streams are headwater streams. SB 346 will not prevent the diversion of water but rather incorporates a measurement issue. The bill does not sacrifice agricultural uses for recreational uses, he further emphasized, but contains beneficial use clauses. SEN. YELLOWTAIL proposed amendments to the bill.

EXHIBIT 53

HEARING ON SB 280

Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, SD 41, Big Timber, presented SB 280, the Montana Water Plan. The bill addresses, for the first time, the

relationship between water quality and water quantity. Meetings designed for public input were held prior to adoption of this water plan. SEN. GROSFIELD detailed the bill with proposed amendments. EXHIBIT 54

Proponents' Testimony:

Mark Simonich, Director, DNRC, presented amendments to SB 280. EXHIBIT 55

Ted Doney, on his own behalf, said he will support the bill only as amended. SB 280 introduces a significant new concept; making water quality a criteria for new water uses or changes.

John Bloomquist, Montana Stockgrowers Association, supported the bill with amendments.

Lorna Frank, Montana Farm Bureau, supported the bill with amendments.

Jo Brunner, Montana Water Resources Association, offered support for the bill as amended.

Stan Bradshaw, Montana Trout Unlimited, said although he supports SB 280, he disagrees with SEN. GROSFIELD'S statement that SB 280 is the most significant water change in history.

Jim Jensen, Montana Environmental Information Center (MEIC), appointed to the Water Planning Steering committee, said groundwater protection is important and has been undervalued.

Bruce Farling, Clark Fork Coalition, stated that although the Coalition supported the bill, the proposed amendments remove the bill's bite.

Jay Chamberlain, President, Montana Water Resources Association (MWRA), said MWRA supports SB 280 as amended.

Dan White, on behalf of ARCO, presented amendments to the bill, EXHIBIT 56, but said ARCO will support the legislation with or without amendments.

Karen Fagg, on behalf of Governor Racicot's administration, stated the Administration did not share the same concerns as other proponents but does support the process. SB 280 is a property rights protection bill.

Terry Murphy, St. Ignatius, said he will support the bill as amended.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

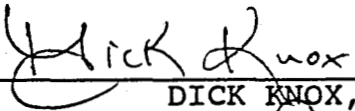


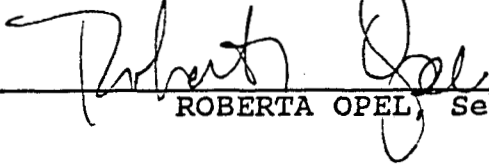
Closing by Sponsor:

SEN. GROSFIELD stated that SB 280 does not include all work accomplished by the Water Policy Committee. Evolutionary, rather than revolutionary, change is needed. Proposed amendments pose some frustration. The water planning process incorporates the water policy committee concerns about water quality and quantity.

ADJOURNMENT

Adjournment: The meeting adjourned at 8:55 p.m.

  
\_\_\_\_\_  
DICK KNOX, Chairman

  
\_\_\_\_\_  
ROBERTA OPEL, Secretary

DK/ro

HOUSE OF REPRESENTATIVES  
53RD LEGISLATURE - 1993  
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE \_\_\_\_\_

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[illegible]

HR:1993  
wp.rollcall.man  
CS-09

Amendments to Senate Bill No. 280  
Third Reading Copy

Requested by Sen. Grosfield  
For the Committee on Natural Resources

Prepared by Michael S. Kakuk  
March 24, 1993

1. Page 2, line 1.  
Following: "effects"  
Insert: "on the uses of water as classified"
2. Page 3, line 6.  
Following: "of"  
Strike: "an"  
Insert: "a prior"
3. Page 3, lines 16 through 20.  
Strike: the second "is" on line 16 through "met" on line 20  
Insert: "must contain substantial credible information  
establishing to the satisfaction of the department that the  
criteria in subsection (1)(g), (1)(h), or (1)(i), as  
applicable, may not be met. For the criteria set forth in  
subsection (1)(h), only the department of health and  
environmental sciences or a local water quality district  
established under Title 7, chapter 13, part 45, may file a  
valid objection"
4. Page 10, lines 21 through 23.  
Strike: subsection (g) in its entirety  
Renumber: subsequent subsection
5. Page 11, line 3.  
Strike: "through (2)(h)"  
Insert: "and (2)(g)"
6. Page 11, lines 4 through 8.  
Strike: the second "is" on line 4 through "(2)(h)" on line 8  
Insert: "must contain substantial credible information  
establishing to the satisfaction of the department that the  
criteria in subsection (2)(f) or (2)(g)"
7. Page 17, lines 20 through 22.  
Strike: subsection (g) in its entirety  
Renumber: subsequent subsection
8. Page 18, line 2.  
Strike: "through (2)(h)"  
Insert: "and (2)(g)"
9. Page 18, lines 3 through 6.  
Strike: the second "is" on line 3 through "(2)(h)" on line 6  
Insert: "must contain substantial credible information  
establishing to the satisfaction of the department that the  
criteria in subsection (2)(f) or (2)(g)"

EXHIBIT 55  
DATE 3-24-93  
SB 280

AMENDMENTS TO SENATE BILL NO.280  
THIRD READING (BLUE COPY)

1. Page 24, lines 16 and 17.

Following: "that" on line 16

Strike: "excessive" on line 16 through "migration" on line 17

Insert: "a deterioration in the quality of water within the  
ground water area exists"

EXHIBIT 56  
DATE 3-24-93  
HB SB 280

TESTIMONY  
S.B. 280 STATE WATER PLAN  
HOUSE NATURAL RESOURCES COMMITTEE  
MARCH 24, 1993

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, FOR THE RECORD MY NAME IS JOHN BLOOMQUIST. I AM A WATER RIGHTS ATTORNEY FROM DILLON, MT, AND THE SPECIAL ASSISTANT FOR THE MONTANA STOCKGROWERS ASSOCIATION. I AM TESTIFYING BEFORE YOU TODAY IN SUPPORT OF THE STATE WATER PLAN, S.B. 280 AS AMENDED BY SENATOR GROSFIELD.

THIS BILL REPRESENTS A SIGNIFICANT CHANGE IN MONTANA WATER LAW. INTEGRATION OF WATER QUALITY INTO THE WATER ALLOCATION SYSTEM IS A DRASTIC CHANGE IN MANAGEMENT OF THE WATER RESOURCE IN MONTANA BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION. THE RAMIFICATIONS OF THIS APPROACH NEED TO BE CAREFULLY ANALYZED AS THE MANAGEMENT OF THIS VALUABLE RESOURCE IS CRITICAL TO THIS STATE. THE STATE WATER PLANNING PROCESS WAS AN ARDUOUS EFFORT TO IMPLEMENT WATER QUALITY INTO THE WATER QUANTITY ALLOCATION PROCESS. SINCE THE ISSUE IS VERY CONTENTIOUS AND BECAUSE THE RAMIFICATIONS OF ANY APPROACH MAY SIGNIFICANTLY IMPACT THE USE OF THE WATER RESOURCE, MSGA BELIEVES THAT S.B. 280, AS AMENDED BY THE SPONSOR, PROVIDES A REASONABLE APPROACH CONCERNING ISSUES SURROUNDING WATER QUALITY AND THE ALLOCATION PROCESS.

ALTHOUGH THERE ARE GREAT CONCERNS BY WATER USERS LOCATED THROUGHOUT THE STATE WITH THE EFFECTS OF THIS BILL, MSGA SUPPORTS THIS LEGISLATION AS AMENDED IN ADDRESSING WATER QUALITY ISSUES AND THE ALLOCATION SCHEME.

THANK YOU FOR THE OPPORTUNITY TO TESTIFY BEFORE YOU TODAY AND THE MSGA SUPPORTS S.B. 280 AS AMENDED.

RATIONALE FOR AMENDMENT OF  
SB 280 OFFERED BY ARCO

To Section 4, 85-2-506(2), MCA.

(g) that water quality within the groundwater area is not suited for a specific beneficial use defined by 85-2-102(2)(a).

- 1) From the public perspective, this amendment allows a landowner to seek approval of a controlled groundwater area on the basis of water quality concerns where there is no public provider. In rural areas where significant groundwater withdrawals are not an issue, there nevertheless may be water quality concerns which may preclude use of groundwater for a specific purpose. For example, where an owner of property sells to a developer and the seller wants to ensure that a well for use as a domestic supply is not drilled where feed lots or agricultural land uses which have adversely affected groundwater. Uses outside of this specific beneficial use described by the statute such as agricultural, irrigation, etc. could continue.
- 2) With this amendment, a Petitioner may seek to establish a groundwater area where withdrawals would be prohibited for one or more purposes. This provides flexibility to use groundwater for specific purposes which are not limited based upon water quality concerns, while others may be prohibited.
- 3) From ARCO's perspective, the controlled groundwater area provides an essential institutional control mechanism which will supplement engineering controls and treatment remedies. As such, it is important that the statute provide the basis for a Petitioner, whether it be ARCO or a local public health agency, to establish a groundwater area where no groundwater withdrawals are occurring or are reasonably anticipated in the future. There exists then, a basis for establishing a groundwater area solely because of water quality concerns. Groundwater withdrawals (other than those which may be required to implement a selected remedy) are generally counterproductive where the objective of a remedy is to contain and treat groundwater. Therefore, it is important to prohibit future withdrawals which may diminish the success of a selected remedy.

EXHIBIT 51  
DATE 3-24-93  
HB. SB 280

Proposed Amendment to Senate Bill 280

In the House Natural Resources Committee

March 24, 1993

Proposed by ARCO

1. Page 24, line 18.  
Strike: "or"

2. Page 24, line 21.  
Following: "occur"  
Strike: "."  
Insert: "; or"

3. Page 24.  
Following: line 21.  
Insert: "(g) that water quality within the ground water area  
is not suited for a specific beneficial use defined by  
85-2-102(2)(a)."

HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

*Natural Resources* COMMITTEE BILL NO. *SB 280*  
DATE *March 24, 1993* SPONSOR(S) *L. Grosfield*  
PLEASE PRINT PLEASE PRINT PLEASE PRINT

| NAME AND ADDRESS                                            | REPRESENTING                      | SUPPORT                       | OPPOSE                       |
|-------------------------------------------------------------|-----------------------------------|-------------------------------|------------------------------|
| Jim Rokosch <sup>4657 Haverhill St.</sup><br>Sturbridge, MA | Self                              | X                             |                              |
| <del>[Redacted Name]</del>                                  | <del>[Redacted Address]</del>     | <del>[Redacted Support]</del> | <del>[Redacted Oppose]</del> |
| MARK Simorich                                               | DNR                               | X                             |                              |
| Karl Kramer                                                 | Self                              |                               | X                            |
| Tom Kramer                                                  | Agriculture                       |                               | X                            |
| Jim Jansen                                                  | MEIC                              | X                             |                              |
| Dennis Kavanaugh<br>1431 S. THIRD ST.<br>BEN                | SELF                              | X                             |                              |
| J. Brown                                                    | MWA                               | f                             |                              |
|                                                             | TOMAHAWK RANCH                    |                               |                              |
| Marshall Horn Heintzen MT                                   | Troud Unlimited                   | X                             |                              |
| Stan Frieser<br>Helenia                                     | Priety Pear Sportsman Association | X                             |                              |
| Ed McCawky                                                  | Self                              |                               | X                            |
| Frank Worman                                                | Self                              |                               | X                            |
| Beno Compton                                                | Self                              |                               | X                            |

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.



HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

280

*Natural Resources*

COMMITTEE

BILL NO.

DATE *March 24, 1993* SPONSOR(S)

*Sp. Z. Hallowell* *Crossfield*

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

| NAME AND ADDRESS                                        | REPRESENTING            | SUPPORT            | OPPOSE |
|---------------------------------------------------------|-------------------------|--------------------|--------|
| DAN WHITE<br>P.O. Box 1715 HELENA                       | ARCO                    | w/AMEND<br>X       |        |
| Steve Leathe<br>2817 3rd Av. N. Gr Falls                | self                    | X                  |        |
| Janet Ellis                                             | MT Audubon Leg Fund     | X                  |        |
| Dave Beck                                               | Self                    |                    | X      |
| Donald R. Beck                                          | rancher Garrison        |                    | X      |
| Don R. Work                                             | Rancher Haverhill       |                    | X      |
| Larry Deschamps                                         | rancher                 | with<br>amendments |        |
| Tom Kamp <sup>Manhattan</sup><br>534 Dutch Hill - Wash. | rancher + Farm Impl Div |                    | X      |
| Margi Lemmlein                                          | Cow Belles              |                    | X      |
| Don Berg                                                | self                    |                    | X      |
| Sid Kamp                                                | self                    |                    | X      |
| Luella Anderson                                         | self                    |                    | X      |
| Ermit Anderson                                          | self                    |                    | X      |
| Paul Anderson                                           | Self                    |                    | X      |

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

Natural Resources COMMITTEE BILL NO. SB 280  
DATE March 24, 1993 SPONSOR(S) L. Grosfield  
PLEASE PRINT PLEASE PRINT PLEASE PRINT

| NAME AND ADDRESS                      | REPRESENTING                | SUPPORT      | OPPOSE      |
|---------------------------------------|-----------------------------|--------------|-------------|
| URI Box 4<br>Max Maddox Chinook Mt    | Chinook Division Inspection | X            |             |
| RT. 2 Box 169<br>DARELL STOTT CHATEAU | ELDORADO Loop               | X            |             |
| Deanshall Billing                     | BB.W.A. with ant            | X            |             |
| Harry A. Latimer                      | RAVALLI COUNTY              |              | X           |
| John E. Lam                           | rancher                     |              | X           |
| Marty L. Settle                       | Rancher                     |              | X           |
| Blunderson                            | Big Hole Ranch, Ltd.        |              | X           |
| Robert D. Peterson                    | Rancher                     |              | X           |
| JACK HIRSCH                           | BIG HOLE RIVER              |              | X           |
| <del>Harry A. Peterson</del>          | <del>RAVALLI COUNTY</del>   | <del>X</del> | <del></del> |
| <del>Bob L. Settle</del>              | <del>Rancher</del>          | <del>X</del> | <del></del> |
| Bruce Farling                         | Clark Fork Coalition        | ✓            |             |
| DAVE YERK                             | American Fisheries Society  | X            |             |
| John R. Rasmussen                     | Self                        |              |             |

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

Natural Resources COMMITTEE

BILL NO.

SB 280

DATE March 24, 1993 SPONSOR(S)

L. Grosfield

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

| NAME AND ADDRESS   | REPRESENTING            | SUPPORT | OPPOSE |
|--------------------|-------------------------|---------|--------|
| TACK VAN Cleve     | self                    |         | X      |
| Richard C. O'Leary | self                    | X       |        |
| Brian J. Sheena    | Great Falls MT          | X       |        |
| John J. Tarnowski  | self                    | X       |        |
| Esther J. McDonald | Upper Flat Creek        |         | X      |
| John McDonald      | self                    |         | X      |
| Bill Luff          | Upper Flat Creek Valley |         | X      |
| Ed Hopkins         | Victa MT                |         | X      |
| William Wetstone   | Corvallis Mt.           |         | X      |
| Ernest Freeman     | Hamilton, Mt.           |         | X      |
| James H. Freeman   | Victor MT               |         | X      |
| George Vogt        | Victor MT               |         | X      |
| Joseph Vogt        | Hamilton                |         | X      |
| Ababelle Hove      | Hamilton Mt.            |         | X      |

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

Natural Resources COMMITTEE BILL NO. SB 280  
DATE March 24, 1993 SPONSOR(S) L. Grosfield  
PLEASE PRINT PLEASE PRINT PLEASE PRINT

| NAME AND ADDRESS                    | REPRESENTING                | SUPPORT                          | OPPOSE |
|-------------------------------------|-----------------------------|----------------------------------|--------|
| Francis V Jards                     | self                        |                                  | X      |
| Richard Arent                       | self                        |                                  | X      |
| Ed Draper                           | self                        |                                  | X      |
| John Veigand                        | self                        |                                  | X      |
| Bill Newman                         | self                        |                                  | X      |
| Bill Hodge                          | "                           |                                  | X      |
| Brian Weidenesser ManHette<br>LOIES | APA                         | X WITH<br>Grosfield<br>amendment |        |
| JIM MARCHESEAU                      | SELF                        |                                  | X      |
| Ronnie Marcheseault                 | self                        |                                  | X      |
| Mildred Hodge                       | Corvallis grange            |                                  | X      |
| Lillian Renuaker                    | RR Stockpawers              |                                  | X      |
| Mary Stark                          | Grassroots for Multiple Use |                                  | X      |
| Ronald Nash                         | self                        |                                  | X      |
| Jack G. Evans                       | self                        |                                  | X      |

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS  
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

Natural Resources COMMITTEE BILL NO. SB 280  
DATE March 24, 1993 SPONSOR(S) L. Grosfield  
PLEASE PRINT PLEASE PRINT PLEASE PRINT

| NAME AND ADDRESS                     | REPRESENTING                   | SUPPORT | OPPOSE |
|--------------------------------------|--------------------------------|---------|--------|
| Richard D. Marshall<br>Doris Bridges | self                           |         | ✓      |
| Alan Rolfe<br>Great Falls            | Self                           | ✓       |        |
| JESS KILGORE<br>THREE FORKS, MA      | A. P. R.                       |         | ✓      |
| Alice J. Day                         | Cowbells                       |         | ✓      |
| Jim Hagenbach Dillon                 | Self                           |         | ✓      |
| Lee Jacobson                         | Bud Jacobson & Son             |         | ✓      |
| Don Tambe                            | Self                           |         | ✓      |
| Terry Murphy St. Ignatius            | SELF                           |         | ✓      |
| Alice Thoft                          | Western Mt. Wiganey            |         | ✓      |
| Shirley Bugli                        | MT WIFE & MIK - St Ignace B.R. |         | ✓      |
| Vernice E. Miller                    | Butterroot Cow Bells           |         | ✓      |
| Gene Vallance                        |                                |         | ✓      |
| Elmer D. Severson                    | Self                           |         | ✓      |
|                                      |                                |         |        |

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HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

Natural Resources COMMITTEE BILL NO. SB 280  
DATE March 24, 1993 SPONSOR(S) L. Grasfield  
PLEASE PRINT PLEASE PRINT PLEASE PRINT

| NAME AND ADDRESS                                      | REPRESENTING                      | SUPPORT        | OPPOSE |
|-------------------------------------------------------|-----------------------------------|----------------|--------|
| Gerry Nyssen                                          | MWRA, GRNFLOS IRR DIST            | ✓              |        |
| VERNON L. WESTLAKE<br>3186 LOVE LN BOZ.               | A.P.A. - SELF - WITH AMEND -      | ✓              |        |
| <del>For STAMMONS<br/>1911 150 Black, Bozeman</del>   | <del>Gallatin Wildlife Area</del> |                |        |
| Stuart L. Westlake<br>2900 Love Lane Bozeman          | A.P.A. - Self                     | with<br>Amend  |        |
| JUDY JACKSON<br>RT. 1 - Box 184<br>THREE FORKS, MONT. | SELF                              | with<br>amend  |        |
| Don Charles                                           | Montana Water Resource<br>A.22    | X              |        |
| WANDY WASH<br>ARCO 307 E Park Ave<br>59711            | ARCO                              | WITH<br>AMEND. |        |
| Jack C Mauer<br>4640 W H Ln Stevi 59874               | Bitterroot Trout Unlimited        | ✓              |        |
| Annette McLEAN <sup>Twin</sup> Bridges                | SELF                              |                |        |
| BARRY HEDRICK ZINGL                                   | MASLA - SELF                      | WITH<br>AMEND  |        |
| Chris Marchion                                        | Anaconda Sportsman Club           | ✓              |        |
| Sidney Smith                                          | SELF                              | ✓              |        |
| Wally Klase                                           | SELF + others                     | ✓              |        |

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opposition to the compromise.

Motion/Vote: REP. DOUG WAGNER moved to adopt the compromise amendments to SB 172. The motion carried.

Motion/Vote: REP. GARY FELAND MOVED SB 172 BE CONCURRED IN AS AMENDED. The motion carried on an 11 to 5 vote.

EXECUTIVE ACTION ON SB 196

Motion/Vote: REP. JAY STOVALL MOVED SB 196 BE CONCURRED IN. The motion failed on a 9 to 7 vote.

EXECUTIVE ACTION ON SB 294

Motion/Vote: REP. FAGG MOVED SB 294 BE CONCURRED IN. The motion carried.

EXECUTIVE ACTION ON SB 311

Discussion: SEN. GREG JERGESON submitted amendments for committee consideration. EXHIBITS 9 and 10 He suggested striking "each interest owner" on page 2, line 1, and insert "lessor".

Motion/Vote: REP. HARPER moved to adopt the amendments to SB 311. The motion carried.

Motion/Vote: REP. SCHWINDEN MOVED SB 311 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON SB 248

Motion: REP. FAGG MOVED SB 248 BE CONCURRED IN. The motion carried unanimously.

EXECUTIVE ACTION ON SB 280

Motion/Vote: REP. FAGG moved to adopt the ARCO amendments to SB 280. Motion carried.

Discussion: A letter from Water Policy Committee Chairman, Hal Harper, addressed the benefits of SB 280. EXHIBIT 11a

Motion/Vote: REP. FAGG moved to adopt the amendments requested by SEN. LORENTS GROSFIELD. EXHIBIT 11 Motion carried.

Motion/Vote: MOTION WAS MADE THAT SB 280 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

## NATURAL RESOURCES COMMITTEE

DATE \_\_\_\_\_

3/26/93

[illegible]

CS-09



HOUSE STANDING COMMITTEE REPORT

March 29, 1993

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 280 (third reading copy -- blue) be concurred in as amended.

Signed: [Signature]  
Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Gilbert

1. Page 2, line 1.

Following: "effects"

Insert: "on the uses of water as classified"

2. Page 3, line 6.

Following: "of"

Strike: "an"

Insert: "a prior"

3. Page 3, lines 16 through 20.

Strike: the second "is" on line 16 through "met" on line 20

Insert: "must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (1)(g), (1)(h), or (1)(i), as applicable, may not be met. For the criteria set forth in subsection (1)(h), only the department of health and environmental sciences or a local water quality district established under Title 7, chapter 13, part 45, may file a valid objection"

4. Page 10, lines 21 through 23.

Strike: subsection (g) in its entirety

Renumber: subsequent subsection

5. Page 11, line 3.

Strike: "through (2)(h)"

Insert: "and (2)(g)"

6. Page 11, lines 4 through 8.

Strike: the second "is" on line 4 through "(2)(h)" on line 8

Insert: "must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g)"

Committee Vote:

Yes 12, No     .

701119SC.Hss

7. Page 17, lines 20 through 22.

Strike: subsection (g) in its entirety

Renumber: subsequent subsection

8. Page 18, line 2.

Strike: "through (2) (h)"

Insert: "and (2) (g)"

9. Page 18, lines 3 through 6.

Strike: the second "is" on line 3 through "(2) (h)" on line 6

Insert: "must contain substantial credible information  
establishing to the satisfaction of the department that the  
criteria in subsection (2) (f) or (2) (g)"

10. Page 24, line 18.

Strike: "or"

11. Page 24, line 21.

Strike: "."

Insert: "; or (g) that water quality within the ground water  
area is not suited for a specific beneficial use defined by  
85-2-102(2) (a)."

Amendments to Senate Bill No. 280  
Third Reading Copy

EXHIBIT 11  
DATE 3-26-93  
HB SB 280

Requested by Sen. Grosfield  
For the Committee on Natural Resources

Prepared by Michael S. Kakuk  
March 24, 1993

1. Page 2, line 1.  
Following: "effects"  
Insert: "on the uses of water as classified"
2. Page 3, line 6.  
Following: "of"  
Strike: "an"  
Insert: "a prior"
3. Page 3, lines 16 through 20.  
Strike: the second "is" on line 16 through "met" on line 20  
Insert: "must contain substantial credible information  
establishing to the satisfaction of the department that the  
criteria in subsection (1)(g), (1)(h), or (1)(i), as  
applicable, may not be met. For the criteria set forth in  
subsection (1)(h), only the department of health and  
environmental sciences or a local water quality district  
established under Title 7, chapter 13, part 45, may file a  
valid objection"
4. Page 10, lines 21 through 23.  
Strike: subsection (g) in its entirety  
Renumber: subsequent subsection
5. Page 11, line 3.  
Strike: "through (2)(h)"  
Insert: "and (2)(g)"
6. Page 11, lines 4 through 8.  
Strike: the second "is" on line 4 through "(2)(h)" on line 8  
Insert: "must contain substantial credible information  
establishing to the satisfaction of the department that the  
criteria in subsection (2)(f) or (2)(g)"
7. Page 17, lines 20 through 22.  
Strike: subsection (g) in its entirety  
Renumber: subsequent subsection
8. Page 18, line 2.  
Strike: "through (2)(h)"  
Insert: "and (2)(g)"
9. Page 18, lines 3 through 6.  
Strike: the second "is" on line 3 through "(2)(h)" on line 6  
Insert: "must contain substantial credible information  
establishing to the satisfaction of the department that the  
criteria in subsection (2)(f) or (2)(g)"



# WATER POLICY COMMITTEE

Montana State Legislature

EXHIBIT 114  
DATE 3-26-93  
HB SB 280

## SENATE MEMBERS

Esther G. Bengtson, Vice Chairman  
Tom Beck  
Lorents Grosfield  
Lawrence G. Stimatz

## HOUSE MEMBERS

Hal Harper, Chairman  
Vivian M. Brooke  
Russell Fagg  
Thomas N. Lee

## COMMITTEE STAFF

Environmental Quality Council  
Capitol Station  
Helena, Montana 59620  
(406) 444-3742

March 26, 1992

Representative Dick Knox  
Chairman, House Natural  
Resources Committee  
State Capitol  
Helena, MT 59620

Dear Representative Knox:

I am writing on behalf of the Water Policy Committee in support of SB 280. Apart from our statutory involvement with and support of the water planning process, the Committee believes that passage and full implementation of SB 280 is crucial to a successful conclusion of the Committee's Geothermal Resource Study.

The 1991 Legislature, through Senate Joint Resolution 25, requested the Committee to conduct an interim study of the need for and feasibility of state regulation of Montana's geothermal resources. Specifically, the Committee was asked to determine:

- i. the need for and feasibility of state regulations to control the development of energy that may be extracted from the natural heat of the water and the development of any geothermal byproduct;
- ii. if regulation of geothermal resources exists in other states with substantial geothermal resources; and
- iii. if water users and entities with an interest in geothermal resources in Montana need and want state regulation of geothermal resources.

Based on the information presented throughout the study, the Committee made the following findings:

- \* Geothermal values are a parameter of water quality.
- \* Under current statutes, rules, and DNRC policy, it is unclear whether or not the DNRC may deny or condition water use permits on the basis of impacts to water quality, including impacts to geothermal values. It is clear that the DNRC has never denied or conditioned a water use permit on this basis.

- \* Geothermal resources have a value in addition to those associated with other, non-geothermal, water resources.
- \* Current geothermal resource users strongly express a desire to ensure that their geothermal resources are fully protected under Montana water law.
- \* Protecting existing and future geothermal resource users necessitates increasing the protection of the geothermal resource itself.

Based on these findings the Committee made the following recommendation to the Legislature.

**Final Committee Recommendations**

*The Committee recommends that the DNRC be granted clear authority to deny or condition new water permits or applications for changes to water use permits on the basis of impacts to geothermal values. This determination should be based on beneficial use and adverse impact criteria currently used by the DNRC in processing new permit or change of use applications.*

*Additionally, the Committee recommends that state law be amended to allow for designation of a controlled ground water area on the basis of future or existing adverse impacts to a geothermal resource.*

The Committee closely followed the State Water Planning Process and believes that the changes recommended in that Plan, and now contained in SB 280, will adequately implement the Committee recommendations for the Geothermal Resources Study. The Committee believes that the term "water quality" includes the specific parameter of geothermal values. It is the intent of the Committee that geothermal values be added to the "bundle" of rights protected under the SB 280.

Sincerely,



Hal Harper,  
Chairman